

3

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

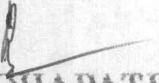
ORIGINAL APPLICATION NO. 503 OF 2007

CUTTACK THIS IS THE 13th DAY OF AUG., 2010

A.K. Nayak..... Applicant
Vs.
Union of India & Others..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?


(C. R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(G. SHANTHAPPA)
JUDICIAL MEMBER

4

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 503 OF 2007

CUTTACK THIS IS THE 3rd DAY OF AUG., 2010

CORAM:

HON'BLE MR. G. SHANTHAPPA, JUDICIAL MEMBER
HON'BLE MR. C.R. MOHAPATRA, ADMN. MEMBER

.....

A.K. Nayak, aged about 47 years, S/o- J. Nayak, At/Po-Kulgi, Via-Bahalda, Dist-Mayurbhanj, presently working as E.D. B.P. M., Kulgi Branch, Post Office, Kulgi, Via-Bahalda, Dist-Mayurbhanja.

..... Applicant

By the Advocate(s) M/s-K.P. Mishra,
S. Mohapatra,
T.P. Tripathy,
L.P. Dwivedy

Vs.

1. Union of India, represented by it's Director General (Posts), Dak Bhawan, Asoka Road, New Delhi.
2. Superintendent of Post Offices, Mayurbhanja Division, Baripada, At/Po-Baripada, Dist-Mayurbhanj.
3. Sub-Divisional Inspector, (Posts), Rairangpur, At/P.O-Rairangpur, District-Mayurbhanj.

..... Respondents

By the Advocate(s)..... Mr. S.B. Jena, ASC



ORDERHON'BLE MR. G. SHANTHAPPA, JUDICIAL MEMBER

This Original Application has been filed by the applicant under Section 19 of the Administrative Tribunal's Act, 1985 seeking the following relief:-

- “ (i) direct/order the respondents to reassign the seniority of the applicant w.e.f. 10.01.1997 and thereby grant all consequential service benefits to the applicant;
- (ii) hold/declare that the applicant is entitled for the salary for the period from 30.04.1998 to 31.03.2007, for the period the applicant was illegally and unlawfully deprived to discharge his duty and thereby direct the Respondents to release the same within a stipulated period as prescribed by this Tribunal.

2. It is the an admitted fact that the applicant had filed O.A. 252/98 seeking the following relief :

- “ (i) quash the impugned order of termination as at Annexure-3 by concurrently holding the same is bad, illegal and cannot be sustainable in the eyes of law;
- (ii) hold/declare that the Rule-6(b) of E.D. Agent (Conduct and Service) Rules, 1964 is ultravires to the Constitution of India and violative of Articles 14, and 16 of the Constitution of India;
- (iii) direct/order the respondent No.2 to allow the applicant to continue in the Branch Post Office, Kulgi against the post of EDBPM with all the consequential service and monetary benefits;



3. This Tribunal was pleased to allow the O.A. and quashed the order at Annexure-A/3. The order of this Tribunal in the said O.A. dated 08.05.2000 reads as under:-

“In view of the above, the order at Annexure-3 is quashed. The Original Application is accordingly allowed.”

4. The Respondents challenged the said order before the Hon'ble High Court in O.J.C No.8608/2000. The said writ petition was dismissed on 24.08.2006. The Respondents have complied the direction of this Tribunal and appointed the applicant on 12.04.2007 vide Annexure-A/3. The said order reads as under:-

“Sri A.K. Nayak, S/o- J. Nayak, at/Po-Kulgi, via-Bahalda, Dist-Mayurbhanj, who has been ordered to be appointed as GDSBPM Kulgi BO in A/C with Bahalda SO under Rairangpur HQ, vide Divisional Office letter No.A-448/P F dated 05.04.07.”

5. The applicant submitted his representation dated 31.05.07 requesting the Respondents i.e, the Superintendent of Post Offices, Mayurbhanj Division, for payment of arrear salary for the period from 06.05.98 to 12.04.07. The prayer of the applicant in the said representation reads as under:-

“ I humbly pray before your goodself to consider my case sympathetically by granting me seniority in the post in question w.e.f. 18.01.1997 and pay the back wages from the period 06.05.98 to 12.04.07 with all other consequential monetary benefit and obliged.”



6. When no reply was received from the Respondents the applicant approached this Tribunal for a direction as prayed in the present O.A.

7. It is the case of the applicant that though the O.A. No.252/98 was allowed by this Tribunal and the impugned order at Annexure-A/3 in the said O.A. was quashed, the applicant has to be reinstated into service but the Respondents have appointed the applicant as per Annexure-A/3 dated 12.04.07 i.e., a fresh appoint^{ment} but no arrears of salary and consequential benefits were granted hence the present O.A. In his representation he has asked for the arrear of salary from the period 06.05.98 to 12.04.07 with all other consequential monetary benefit. That has not been considered for the purpose of seniority and arrears of pay. In the relief of the O.A. he is asking for salary from 30.04.1998 to 31.03.2007. When the order of termination was quashed by this Tribunal, the said order has been confirmed by the Hon'ble High Court. The dispute attained finality, the applicant is entitled under law to get his seniority from the date of his initial appointment i.e., from 10.01.97.

8. The Respondents have vehemently opposed this O.A. and denied the relief of the applicant and admitted the earlier order of this Tribunal in O.A. No.252/98 and the orders of the Hon'ble High Court. They have complied the direction of this Tribunal and issued the order of appointment on 12.04.07 and the applicant joined the service hence



the applicant is not eligible for financial benefits since he was not in service i.e., out of office. On the principles of no work no pay the applicant is not eligible for financial benefits..

9. When the Respondents have received the order of the Hon'ble High Court immediately without any delay, on receipt of the said order, decision was taken to absorb the applicant as GDSBPM, Kulgi BO by addressing the Sub-Divisional Inspector on 20.03.2007 to identify a justified vacant post to absorb Sri Ramshankar Nayak, GDSBPM, Kulgi BO who was working as such. The Sub-Divisional Inspector identified the vacant post of GDSBPM, Soso BO on 24.03.07 which was not considered as the same post was suggested earlier for compassionate appointment. Again the Sub-Divisional Inspector was asked on 30.03.07 to intimate the vacancy position in the vicinity, the reply to which was received on 04.04.07. On 05.04.07 the Sub-Divisional Inspector was directed to appoint the applicant who was appointed as GDSBPM, Kulgi BO on 20.04.07 after imparting necessary training. The service of the applicant was terminated since he was not eligible for the post on merit. The only lapse^y on the part of the Department was procedural lapse^y. The order of termination of the service of the applicant was issued due to irregular selection of the applicant as GDSBPM, Kulgi BO. The Respondent No.2 being the appointing authority of the applicant, appointed the applicant as



GDSBPM, Kulgi BO on 20.04.07 after imparting necessary training for required number of days.

10. When the O.A. was allowed by this Tribunal, the Hon'ble High Court confirmed the orders of this Tribunal which is referred above, the applicant has pleaded for payment of wages for the period of his termination is not accepted as he has not done any duty during the period and there is provision of payment on the principle "No work, no Pay", . As regards claim for payment of wages, no particular discussion was made in the order of the Hon'ble Tribunal. As such, the applicant is not entitled to get the wages for the period during which he did not work. The services of the applicant was terminated before completion of probation period of 2 years i.e., 1 year 3 months 18 days. His appointment was made provisionally. After termination of service, there is no provision under rule to allow to work.

11. We have carefully considered the submissions made by either side and perused the pleadings available on record. When this Tribunal was pleased to quash the order of termination as illegal, the O.A. No.252/98 was allowed which means that the relief in the O.A. has *and granted.*
been considered/ The 3rd relief in the said O.A.252/98 was to *2yrs.* direct/order the respondent No.2 to allow the applicant to continue in the Branch Post Office, Kulgi against the post of EDBPM with all the consequential service and monetary benefits. This relief was allowed

GP

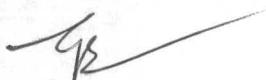
10
-7-

by this Tribunal. Then the orders of this Tribunal in O.A.252/98 has been confirmed by the Hon'ble High Court in OJC No.8608/2000 which amounts to grant of monetary benefits and all consequential benefits.

12. The Respondents vehemently opposed since the applicant did not work that period so he is not eligible for monetary benefits on the principles of no work no pay. We have carefully examined the order at Annexure-A/3 dated 12.04.07 which is a fresh appointment order, the said order was issued as ordered by the Tribunal. When the order of termination has been quashed, the applicant has to be re-instated instead of appointed as GDSBPM Kulgi BO in A/C with Bahalda SO under Rairangpur H.O. The Respondents have appointed the applicant as GDSBPM Kulgi BO on 12.04.07, in our view, which is a fresh order of appointment. There is no reference regarding to count the earlier service from the date of termination of service till 12.04.07.

13. The applicant submitted his representation for grant of seniority and payment of wages from 06.05.98 to 12.04.07, that representation is pending for consideration.

14. The contention of the respondents is not correct, while issuing the order of appointment the Respondents ignored the relief in O.A.252/98, that was granted by this Tribunal vide order dated 08.05.2000. Though the relief in the O.A. is to re-assign the seniority of the applicant and for grant of salary for the period from 30.04.98 to



31.03.07, we hold the entire relief including monetary benefits in the relief of the O.A. was granted and we direct the Respondents to modify the order dated 12.04.07 for re-instatement of the applicant. After considering the applicant as reinstated into service, after that, the Respondents are directed to consider the request of the applicant made in the representation dated 31.05.07. If the applicant is eligible for promotion under the Rule then he may be given the benefit under the Rules. Respondents are given 03 (three) months time to implement the above direction, from the date of receipt of the copy of this order.

15. With the above observation and direction this O.A. is disposed of. No costs.

Chaitanya
(C. R. MOHAPATRA)
ADMINISTRATIVE MEMBER

G. Shanthappa
(G. SHANTHAPPA)
JUDICIAL MEMBER